

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE
APPLICATION OF POTOMAC
ELECTRIC POWER COMPANY FOR
AUTHORITY TO INCREASE ITS RATES
AND CHARGES FOR ELECTRIC
DISTRIBUTION SERVICE

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CASE NO. 9286

**REPLY BRIEF OF
MONTGOMERY COUNTY, MARYLAND**

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Montgomery County, Maryland ("Montgomery County") submits this Reply Brief pursuant to Order No. 84640, issued by the Public Service Commission of Maryland ("Commission") in this proceeding on January 19, 2012.

INTRODUCTION

Montgomery County's May 31, 2012 Initial Brief anticipated and rebutted the major arguments presented by Potomac Electric Power Company ("Pepco" or "Company") in its Initial Brief regarding:

(1) the disallowance of recovery by Pepco of the amounts of its reliability related operation and maintenance ("O&M") expenses and capital expenditures that are larger due to Pepco's imprudence as required by the Commission in Order No. 84564¹, issued in Case No. 9240;²

¹ Order No. 84564, In The Matter Of An Investigation Into The Reliability And Quality Of The Electric Distribution Service Of Potomac Electric Power Company, Case No. 9240, (December 21, 2011) at pp. 3-4, 60.

² See Initial Brief of Montgomery County, Maryland at pp. 6-29.

(2) the disallowance of recovery by Pepco of all outside counsel, outside consultant, and other related costs incurred regarding the Commission's investigation in Case No. 9240, which found Pepco's service unreliable and its management imprudent;³

(3) the baseless contentions by Pepco that it is suffering from chronic under earning caused by regulatory lag, and that the Company is deserving of special rate treatment through a Reliability Investment Recovery Mechanism ("RIM"), a fully forecasted test year, and/or some other mechanism;⁴ and

(4) the appropriate authorized rate of return on equity ("ROE") for Pepco, and the continued inclusion of a 50 basis point reduction in the ROE if the Bill Stabilization Adjustment ("BSA") remains in effect.⁵

However, the complete lack of merit of certain incorrect and unfounded allegations contained in Pepco's Initial Brief requires a direct response by Montgomery County in this Reply Brief.

ARGUMENT

I. TO ACCEPT PEPCO'S ARGUMENT THAT THERE SHOULD BE ZERO DOLLARS DISALLOWED FOR RECOVERY BY PEPCO IN THIS CASE AS A RESULT OF THE COMMISSION'S FINDING OF MANAGERIAL IMPRUDENCE IN ORDER NO. 84564, ISSUED IN CASE NO. 9240, WOULD REQUIRE A NONSENSICAL READING OF THAT ORDER WHICH WOULD IMPROPERLY NULLIFY THE MAJOR REMEDY THAT IT IMPOSED.

In its Initial Brief, Montgomery County debunked the four Pepco Myths⁶ that underlie the Company's argument that, despite this Commission's explicit holding in Order No. 84564, the

³ Id. at pp. 29-32.

⁴ Id. at pp. 32-43.

⁵ Id. at pp. 44-49.

⁶ Id. at pp. 9-18.

number of dollars that Pepco, in this next rate proceeding, Case No. 9286, should be prohibited from recovering since they are additional costs incurred because of the Company's managerial imprudence in operating for a number of years a bottom quartile, unreliable electric system is zero. True to form, Pepco propagates these myths, as predicted, in its Initial Brief through contentions such as:

The Commission should reject the recommendations to further penalize the Company's shareholders. They have already paid the civil penalty assessed in Case No. 9240, and have paid in 2011 and are paying in 2012 the millions of dollars for reliability investment and expense over and above the amounts reflected in current rates.⁷

This is a combination of Pepco Myth Nos. 1 and 4, that the only monetary penalty that Pepco was to bear as a result of Order No. 84564 was the \$1 million civil penalty, and that because Pepco will not collect from its customers any of its additional reliability capital investment and O&M expense during the time prior to the rates in this current Case No. 9286 rate proceeding becoming effective that exceed the amounts previously allowed in Pepco's rates, the Company's shareholders should not be further "penalized." As explained in detail in Montgomery County's Initial Brief, (i) the Commission did explicitly require an additional, substantial monetary remedy in Order No. 84564 for Pepco's managerial imprudence to be imposed in this next rate case, Case No. 9286, and (ii) Pepco's inability to recover any alleged additional expenditures above the amount reflected in its current rates represents nothing more than the natural occurrence between rate cases, where a utility will either over collect or under collect the costs reflected in its current rates until the rates in its next rate case, here Case No. 9286, are established and become effective. This inability to recover is in no way a result of the

⁷ Pepco Initial Brief at p. 15.

Commission's holding in Order No. 84564 and would have occurred regardless of the issuance of that order.

To cut to the heart of the matter, Pepco's position is indefensible because it would render meaningless the Commission's plain holding in Order No. 84654 that: "In the Company's next rate case, the Commission will review reliability spending in 2011-2012, and will disallow the amount that is larger due to the Company's imprudent management in earlier years."⁸ This holding obviously requires that the allowed cost of service utilized to determine Pepco's rates to be collected in the future at the conclusion of its next rate case, i.e., this Case No. 9286, will not be permitted to include those "catch up" costs, where Pepco has had to expend larger amounts to try to make up ground because of the abysmal, bottom quartile reliability that has resulted from years of imprudent neglect of its system.

It would make no sense for the Commission to issue an order in Case No. 9240 on December 21, 2011, that expressly found as a remedy for Pepco's imprudence that the Company would not be able to collect in its current (i.e., Case No. 9217) rates those 2011 reliability expenditures that were greater than they otherwise would be but for Pepco's imprudence. Pepco itself admits that because it did not file its Case No. 9286 rate increase application until December 16, 2011, the Company would not be able in any event to collect any of its 2011 expenditures -- both reliability and non-reliability, and whether for catch up or not -- that were greater than the amounts reflected in current rates. Again, this result is just the normal consequence of Pepco being in between rate cases. Consequently, the Commission's emphatic holding that there would be a remedy "[i]n the Company's next rate case,"⁹ means that the disallowance of recovery because of

⁸ Order No. 84564 at pp. 3-4.

⁹ Id. at p. 3 (emphasis added); see id. at p. 60.

Pepco's managerial imprudence would occur in the rates to be collected prospectively as a result of and at the conclusion of that next rate case, i.e., Case No. 9286, through the disallowance from the cost of service and revenue requirement in that next rate case of "the amount that is larger due to the Company's imprudent management in earlier years."¹⁰

II. PEPCO'S ASSERTION THAT THE REQUIRED DISALLOWANCE OF PEPCO'S COSTS THAT ARE LARGER DUE TO ITS MANAGERIAL IMPRUDENCE DOES NOT INCLUDE RELIABILITY RELATED CAPITAL EXPENDITURES IS CONTRARY TO THE PLAIN LANGUAGE OF ORDER NO. 84564.

Pepco alleges in its Initial Brief that:

The Commission's Order [No. 84564] established no basis to reduce Pepco's reliability plant from the level included in its rate application, nor has any party argued that such a reduction is appropriate.¹¹

Pepco is incorrect on both scores.

As to Pepco's second contention, Montgomery County has argued extensively, as demonstrated by its Initial Brief,¹² that just such a reduction is appropriate. In addition to cross-examination of Pepco witness Gausman by Montgomery County's counsel regarding the amount of increased reliability capital expenditures resulting from Pepco's imprudence,¹³ both Chairman Nazarian¹⁴ and Commissioner Brenner¹⁵ pointedly questioned Mr. Gausman on this same

¹⁰ Id. at p. 4; see id. at p. 60.

¹¹ Pepco Initial Brief at p. 19.

¹² Montgomery County Initial Brief at pp. 22-28.

¹³ Pepco Tr. 168, line 20 – Pepco Tr. 169, line 4. In this Reply Brief, citations to the transcript from the joint Delmarva Power & Light Company, Case No. 9285, and Pepco, Case No. 9286 hearing sessions are designated as "JT Tr.", and citations to the transcript from the hearing sessions concerning only Pepco, Case No. 9286, are designated as "Pepco Tr."

¹⁴ Pepco Tr. 249, lines 4-16; see Pepco Tr. 244, line 15 – Pepco Tr. 246, line 22; Pepco Tr. 248, line 7 – Pepco Tr. 249, line 3.

¹⁵ Pepco Tr. 228, lines 4-10.

subject. Holding to the party line, Mr. Gausman, of course, dutifully responded that the amount was zero. However, such stonewalling has in no way detracted from the intensity or the correctness of Montgomery County's position that reliability capital expenditures that are larger because of Pepco's imprudence must be disallowed in determining Pepco's rates in this Case No. 9286.

Even more important, regarding Pepco's first contention, Order No. 84564 clearly provides that the disallowance in this Case No. 9286 includes capital expenditures as well as O&M expenses. The Commission explicitly included equipment upgrades and other capital expenditures under Pepco's Reliability Enhancement Plan ("REP") among the costs to be disallowed if they were larger as a result of Pepco's imprudence. In agreeing in Case No. 9240 with Montgomery County, the Maryland Energy Administration, and the Office of People's Counsel ("OPC") that denial of recovery should include costs associated with implementing Pepco's REP, the Commission found:

First, Pepco's customers suffered through years of high outages and unreliable service as a direct result of Pepco's neglect of its system. *Second*, the accelerated, enhanced vegetation management and equipment upgrades required now come at a higher cost and in a significantly more concentrated time-frame than if the Company had implemented prudent management practices in the past.¹⁶

* * *

In the next rate case, however, if Pepco intends to seek reimbursement for reliability expenditures, including EIVM costs, equipment upgrades, or other parts of its REP expenses, made in

¹⁶ Order No. 84564 at p. 58 (emphasis added).

2011 or 2012, the Commission will take testimony addressing the amount of expenditures that is larger due to Pepco's imprudence and will disallow recovery of that increment.¹⁷

Moreover, elsewhere in Order No. 84564, the Commission's holding that "[i]n the Company's next rate case, the Commission will review reliability spending in 2011-2012, and will disallow the amount that is larger due to the Company's imprudent management in earlier years,"¹⁸ contains no exclusion from the costs that will be disallowed for reliability spending that is for capital expenditures.

III. PEPKO'S ATTEMPT TO RECOVER ANY OF THE COSTS THAT THE COMPANY INCURRED CONCERNING CASE NO. 9240 SHOULD BE SUMMARILY REJECTED.

Montgomery County definitively showed in its Initial Brief why the entire \$2,517,574.03 related to Pepco's participation in Case No. 9240 that the Company is attempting to include in its rates in this Case No. 9286 should be disallowed by the Commission.¹⁹ In its Initial Brief, Pepco does not present any argument that Montgomery County has not already addressed, including just how vastly different the Commission's investigation in Case No. 9240 into Pepco's quality of service, which resulted in a finding of bottom quartile, unreliable service caused by Pepco's managerial imprudence, was from what Pepco alleges "is a normal and recurring part of the Company's business."²⁰ Montgomery County's very fear is that Pepco does see Case No. 9240 and the Commission's Order No. 84564 as simply being "normal and recurring" business as usual, as evidenced by its steadfast refusal to acknowledge even a nickel

¹⁷ Id. at p. 60 (emphasis added; footnote omitted).

¹⁸ Id. at 3-4.

¹⁹ Montgomery County Initial Brief at pp. 29-32.

²⁰ Pepco Initial Brief at p. 63.

of responsibility for the additional costs that the Commission ordered Pepco would bear that have resulted from the Company's managerial imprudence.

Moreover, Pepco also presents as an argument in favor of recovery of this \$2,517,574.03 from its customers that the Company incurred these dollars as a "part of its ongoing obligation to its shareholders."²¹ The point is that Pepco was defending itself in Case No. 9240 against claims that the Company had neglected its system and the quality of service that it provided to its customers in violation of its ongoing obligation to its customers to provide reliable service in a prudent manner. This unsuccessful defense is totally a shareholder cost, and not a customer cost, especially in light of the Commission's findings in Order No. 84564 that:

Pepco's customers have paid a substantial price for Pepco's neglect, measured not just by direct economic costs such as closures of businesses leading to lost wages and reduced tax revenue, but also by less tangible costs, including the physical discomfort caused by multiple outages and the uncertainty of knowing when persistent outages will end. Then Pepco compounded the problem of unreliable service by failing to provide timely or accurate estimated times of restoration to assist its customers in planning how to respond to outages.²²

* * *

...Pepco's poor vegetation management practices, erratic tree-trimming policies, and inadequate system inspections resulted in a distribution and sub-transmission system that became highly vulnerable to outages from storms and exhibited low levels of reliability even on blue sky days. The costs on ratepayers in the aggregate have been colossal. That conclusion is bolstered by the Montgomery County Work Group's Report that estimated that the

²¹ Id.

²² Order No. 84564 at p. 3 (emphasis added).

costs to County residents of outages in 2010 alone ranged from \$23 to \$115 million.²³

Surely as victims that bore “colossal” costs because of Pepco’s managerial imprudence and resulting unreliable service, Pepco’s customers should be charged none of the \$2,517,574.03 that Pepco has attempted to include in its rates in this case for outside counsel, outside consultants, or any other related costs that Pepco incurred in Case No. 9240.

Two other curious items regarding Pepco’s presentation on this issue should be noted. First, Pepco alleges that \$1,816,980 of this total \$2,517,574.03 “were in-house legal.”²⁴ According to Pepco’s own numbers, this claim is totally false. In footnote 1 to Pepco Exhibit 55 and in Montgomery County Exhibit 4, both of which are documents prepared by Pepco and sponsored by Pepco witness Hook, this \$1,816,980 is clearly denominated as “Total outside counsel cost associated with Case No. 9240” and “Total Outside Counsel,” respectively. In fact, all of the Case No. 9240 costs are denominated by these two exhibits as being for outside legal, outside consulting, and related services.

Second, while Pepco’s Initial Brief argues for complete recovery in this rate case of the \$2,517,574.03 because these are normal regulatory case costs, its own witness Ms. Hook in her prepared rebuttal testimony recognized, as noted in Montgomery County’s Initial Brief,²⁵ that the Case No. 9240 costs are not typical by stating that Pepco would not be opposed to a two-year amortization period.²⁶ However, this concession is not nearly sufficient; instead, the entire \$2,517,574.03 sought to be recovered by Pepco should be disallowed by the Commission.

²³ Id. at p. 56 (emphasis added; footnote omitted).

²⁴ Pepco Initial Brief at p. 62 (emphasis added).

²⁵ Montgomery County Initial Brief at p. 31.

²⁶ Pepco Ex. 34, p. 52, lines 10-12.

IV. PEPCO IS NOT SUFFERING FROM CHRONIC UNDER EARNING, AND ANY DIFFICULTIES IT SEES IN THE FUTURE ARE OF ITS OWN MAKING AND DO NOT MERIT SPECIAL RATE TREATMENT FROM THE COMMISSION.

In its Initial Brief, Montgomery County has shown both that Pepco has not been suffering from chronic under earning and that the Company is a most unworthy candidate for special treatment through any type of regulatory lag mitigation mechanism.²⁷ However, Pepco's Initial Brief presents ominous, but qualified, statements about the terrible fate that might befall Pepco's customers if the Company is not rescued from its supposed chronic under earnings situation. Pepco would have the Commission believe that the Company is not looking out for its own corporate pocketbook here, but instead, is mightily concerned about the plight of its customers – the very people, businesses, and governmental entities that it acted with managerial imprudence toward as it knowingly provided them for years with bottom quartile, unreliable electric service.

Thus, Pepco asserts that “[i]f the debt and equity markets were to develop an adverse view of the Company, customers would be harmed,”²⁸ and “[t]he failure to address the Company's under-earning problem could lead to a credit downgrade, which would harm the Company's ability to access capital on reasonable terms, and thus harm customers.”²⁹ Pepco, of course, never discusses that its current situation of having to spend so much so fast on reliability capital expenditures and O&M costs is the direct result of its own self-inflicted wound of years of spending paltry sums on vegetation management, system inspections and maintenance, and capital expenditures to replace and upgrade equipment while it paid its parent company Pepco Holdings, Inc. (“PHI”) \$476 million in net dividends from 2004 through the issuance of Order

²⁷ Montgomery County Initial Brief at pp. 32-40.

²⁸ Pepco Initial Brief at 5 (emphasis added).

²⁹ Id. (emphasis added; footnote omitted).

No. 84564.³⁰ Now, supposedly for the good of its customers, they should be required to pay Pepco significantly more money more quickly through the adoption of special regulatory lag mitigation mechanisms like the Reliability Investment Recovery Mechanism (“RIM”) and a fully forecasted test year, or at least a regulatory asset should be created³¹.

Pepco relies on its witness Cannell, who, in the Company’s words, “provided an in-depth analysis of investor and rating agency perception of the regulatory challenges faced by Pepco and the market view of the Company’s risk profile.”³² Yet the biggest regulatory challenge that Pepco is facing is that it has acted imprudently, provided unreliable service, been assessed a \$1 million civil penalty, and now must spend many more dollars more quickly to catch up in a frantic attempt to improve the quality of its electric service to achieve even an average level of reliability sometime in the future. And what did Ms. Cannell and the investment community have to say about that?

I’m sure you understand that my role here is to present the perspective of investors. And investors have not, to the best of my knowledge, equity investors certainly have not spoken of the reliability issue in judgmental terms, and nor for that matter have the rating agencies, to the best of my knowledge.³³

³⁰ Order No. 84564 at p. 57 n. 183.

³¹ See Pepco Initial Brief at pp. 9-14. Montgomery County showed in its Initial Brief that Pepco’s proposed RIM is fatally flawed and totally inappropriate for adoption under any circumstances. See Montgomery County Initial Brief at pp. 40-43. Pepco’s Initial Brief presents no additional points that need to be rebutted. However, Pepco does make the claim that “[t]he RIM project categories do not include customer driven, revenue producing load” (Pepco Initial Brief at p. 9), which does not seem to square with Mr. Gausman’s admission on cross-examination that some of the 2012 construction budget amounts listed as “Load” and as “Customer Driven” are also included in the 2012 Total RIM amount. Pepco Tr. 173, line 17 – Pepco Tr. 174, line 18. This discrepancy is discussed in more detail at page 41 n. 132 of Montgomery County’s Initial Brief, where Table 4 of Mr. Gausman’s prepared direct testimony, Pepco Ex. 6, and Ex. PEPCO (WMG)-1, page 4, attached to that same Pepco Ex. 6, are compared.

³² Pepco Initial Brief at p. 4 (footnote omitted).

³³ JT Tr. 917, line 21 – JT Tr. 918, line 4.

Pepco witness Cannell also did not know whether investors would expect that a utility company that provides unreliable service and is engaged in managerial imprudence would be granted a higher ROE because it is a riskier investment or a lower ROE because of the company's imprudent conduct which has resulted in the unreliable service.³⁴ Nor is she even offering an opinion on whether Pepco should be permitted to collect the costs it expends to make its unreliable service reliable in the future.³⁵

The one thing that Ms. Cannell does know, though, is that all three rating agencies have investment grade credit ratings for Pepco, BBB+, Baa2, and BBB+ from S&P, Moody's, and Fitch, respectively, with a stable outlook for the Company.³⁶ Thus, the fact is that, despite its dreadful record on providing reliable service to its customers, Pepco has continued to receive the stamp of approval from the investment community's perspective as presented by the rating agencies.

Pepco's presentation of the parade of horrors that might allegedly occur if the Company is not granted the regulatory lag mitigation mechanisms or the exorbitant 10.75% ROE that it is seeking in this case was the subject of significant questioning of Ms. Cannell by Chairman Nazarian,³⁷ during which the Chairman underscored that the Commission has heard these same claims in prior cases that dire consequences would occur if the Company did not receive the special rate treatment and additional revenues it was seeking:

CHAIRMAN NAZARIAN: But on the other hand, this is the third or fourth case in a row where we've been told if we don't have a RIM, we're going to get downgraded. The third or fourth case in a row where we've been told if we hit somebody for 50

³⁴ JT Tr. 921, lines 9-22.

³⁵ JT Tr. 927, lines 7-14.

³⁶ Pepco Ex.22, p. 32, lines 12-16.

³⁷ See JT Tr. 967, line 21 – JT Tr. 986, line 20.

basis points on their ROE because of decoupling, we're flying in the face of Wall Street's expectations. And so far it's never been true.³⁸

Certainly, Pepco has not begun to meet its burden of proving in this Case No. 9286 that it is true now, let alone that Pepco is deserving of any special regulatory lag mitigation mechanism where, as here, any financial problems that Pepco may allegedly experience are a direct result of its need to expend substantial sums on reliability capital expenditures and O&M expenses to catch up on the reliability of service provided by its electric system after years of neglect resulting from Pepco's managerial imprudence.

V. EITHER THE COMMISSION SHOULD RETAIN THE BSA AND THE 50 BASIS POINT DOWNWARD ADJUSTMENT TO PEPCO'S ROE THAT HAS EXISTED SINCE THE BSA'S INCEPTION, OR THE COMMISSION SHOULD ELIMINATE THE BSA.

Montgomery County explained in its Initial Brief that Pepco witness Hevert's proposal for continuation of Pepco's risk reducing BSA cost tracking mechanism, while eliminating the 50 basis point downward adjustment to the Company's ROE that has been in effect since the BSA was originally adopted by the Commission to reflect this substantial reduction in Pepco's risk, is completely inappropriate.³⁹ The one-sidedness of Mr. Hevert's position is in sharp contrast even to the testimony of Pepco's policy witness Mr. Kamerick, cited by both Montgomery County and Pepco in their respective Initial Briefs, that if the Commission considers extending the 50 basis point ROE reduction, then Pepco would prefer elimination of the BSA.⁴⁰

³⁸ JT Tr. 985, lines 13-21. Because of the significant further reduction of risk that Pepco would enjoy if the Company were granted any type of regulatory lag mitigation mechanism, its adoption would have to be accompanied by an equally significant reduction to Pepco's authorized ROE.

³⁹ Montgomery County Initial Brief at pp. 46-48.

⁴⁰ JT Tr. 129, line 15 – JT Tr. 131, line 1; Montgomery County Initial Brief at pp. 47-48; Pepco Initial Brief at p. 29.

Yet, despite Mr. Kamerick's tacit recognition that Pepco cannot continue to have the BSA without also continuing to experience the 50 basis point ROE downward adjustment, Pepco, in its Initial Brief, apparently cannot bring itself to let go of Mr. Hevert's spurious position.⁴¹ However, Mr. Hevert's proposal is indefensible, not just because of the inherent unfairness of retaining the risk reducing BSA, while jettisoning the reflection of that risk reduction in the 50 basis point ROE reduction, but also because the history of Pepco's BSA reveals that Pepco itself has from the beginning recognized the correctness of an ROE downward adjustment as a necessary component of the BSA mechanism's adoption by the Commission.

Pepco initially proposed the BSA as part of its rate increase application filed on November 17, 2006 in Case No. 9092.⁴² The Company's own rate of return witness in that case, Dr. Roger A. Morin, stated in his prepared direct testimony that if the proposed BSA mechanism were approved by the Commission, "the Company's risk will be reduced, and the cost of common equity capital will likely decline by some 25 basis points."⁴³ Interestingly, Pepco's policy witness in that rate proceeding was PHI's current Chairman, President, and CEO Joseph M. Rigby (at that time Senior Vice President and Chief Financial Officer of PHI⁴⁴), who specifically recognized in his prepared direct testimony that Pepco's proposal for the adoption of the BSA included a proposed 25 basis point reduction in Pepco's ROE because, "according to Dr. Morin, adoption of the BSA reduces somewhat the Company's risk level."⁴⁵

Thus, when the Commission, in 2007, originally approved and implemented the BSA for Pepco in Order No. 81517 in Case No. 9092, no party, including Pepco, questioned that the

⁴¹ Pepco Initial Brief at pp. 26-29.

⁴² Pepco Application, Case No. 9092 at p. 5 (November 17, 2006).

⁴³ Direct Testimony of Dr. Roger A. Morin in In the Matter of the Application of Potomac Electric Power Company for Authority to Revise its Rates and Charges for Electric Service and for Certain Rate Design Changes, Case No. 9092, at p. 67, lines 4-6, filed November 17, 2006.

⁴⁴ Direct Testimony of Joseph M. Rigby in Pepco, Case No. 9092, at p. 1, lines 2-4, filed November 17, 2006.

⁴⁵ Id. at p. 18, line 22 – p. 19, line 1.

Company's risk would thereby be reduced, such that the only issue before the Commission was the size of the downward basis point adjustment to Pepco's ROE, not whether there should be such an adjustment. After stating that "Pepco is less risky with the BSA than without it," the Commission noted that "all parties recognize the appropriateness of reducing Pepco's return on equity by some amount," and then rejected "both the minimal reduction of basis points proposed by the Company [i.e., 25 basis points], and the much larger reduction proposed by People's Counsel"⁴⁶ [i.e., 81 basis points⁴⁷], and instead adopted a 50 basis point reduction to Pepco's ROE.⁴⁸

In short, from its inception as a Pepco proposal, the Company has recognized that the BSA reduces Pepco's risk and that its ROE needs to be reduced to reflect that diminution in risk, and the Commission has found that a 50 basis point downward adjustment to Pepco's ROE properly reflects that reduced level of risk. Accordingly, in this Case No. 9286, either the 50 basis point reduction in Pepco's ROE should be applied along with the continuation of the Company's BSA, or else, as Mr. Kamerick has stated, the BSA, which Pepco itself originally sought, should be terminated.

CONCLUSION

Montgomery County respectfully requests that, on the basis of the record in this Case No. 9286, as stated in Montgomery County's Initial Brief in this proceeding, the Commission:

- (i) fully and firmly enforce its holding in Order No. 84564, issued in Case No. 9240, that "[i]n the Company's next rate case, the Commission will review reliability spending in 2011-2012, and will disallow the amount that is larger due to the Company's

⁴⁶ Order No. 81517, Pepco, Case No. 9092 (July 19, 2007) at p. 72.

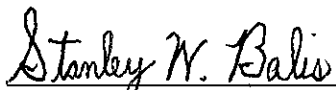
⁴⁷ Id. at p.63 n. 25.

⁴⁸ Id. at p. 72.

imprudent management in earlier years,”⁴⁹ particularly in light of the complete stonewalling on this issue by Pepco that amounts to a collateral attack on that order, as evidenced by the Company’s adamant refusal to even attempt to meet its burden of proof,

- (ii) adopt each of the adjustments proposed by Montgomery County in its Initial Brief regarding the disallowance of cost recovery because of Pepco’s imprudence regarding tree trimming, storms, reliability related O&M expenses, and reliability related capital expenditures,
- (iii) disallow recovery of all of the costs incurred by Pepco relating to the investigation in Case No. 9240, which proceeding resulted in the finding of Pepco’s managerial imprudence because of the bottom quartile reliability of the service it has provided for years to its customers,
- (iv) reject Pepco’s request for any type of regulatory lag mitigation mechanism, including its proposed fatally flawed RIM and forecasted or projected test year,
- (v) authorize an 8.43% ROE for Pepco, that includes the historical 50 basis point BSA downward risk adjustment, and
- (vi) adopt all other appropriate adjustments to Pepco’s proposed revenue requirement advocated by the Public Service Commission Staff and OPC.

Respectfully submitted,



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⁴⁹ Order No. 84564, at pp. 3-4.

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June 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2012, a copy of the foregoing Reply Brief of Montgomery County, Maryland was served electronically and by first-class mail, postage prepaid, on all parties on the Service List in Case 9286:

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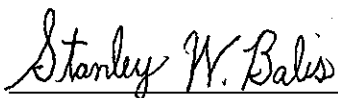
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